

US EPA ARCHIVE DOCUMENT

The Consensus and Dispute Resolution Program

Better Decisions through Consultation,
Collaboration and Dispute Resolution

A Program serving the

U.S. ENVIRONMENTAL PROTECTION AGENCY

Consensus and Dispute Resolution Program
Office of Policy (2136)
401 M Street, S.W.
Washington, DC 20460

I. What is the Consensus and Dispute Resolution Program?

The Consensus and Dispute Resolution Program is a service unit of the Office of Policy at EPA headquarters dedicated exclusively to providing EPA program and regional offices with assistance in appropriate design and use of consultation, consensus and dispute resolution processes. Although the Program is located within the Office of Policy, it is designed to provide services to all EPA offices and to be a central point of information and referral point for stakeholder involvement and dispute resolution programs within EPA. The CDRP is one of three sites in EPA that handle alternative dispute resolution (ADR) assistance, the others are the EPA Alternative Dispute Resolution Specialist and the Office of Enforcement and Compliance Monitoring ADR Program.

II. What Services Does the Consensus and Dispute Resolution Program Provide?

The Consensus and Dispute Resolution Program provides **design assistance, implementation assistance and training** regarding stakeholder involvement, consensus building, negotiated rulemaking and alternative dispute resolution activities and processes. The Program also serves as a point of coordination with the US Institute for Environmental Conflict Resolution and with the Negotiated Rulemaking Subgroup of the Interagency Regulatory Working Group.

Our **Design Assistance** includes:

1. Providing guidance documents, fact sheets, research library and case studies which illustrate good principles and examples of stakeholder involvement, consensus building and alternative dispute resolution.
2. Providing individualized design consultations with management and staff regarding how to determine what stakeholder involvement, consensus building or alternative dispute resolution process to apply to particular rule, policy, program or facility issues. We can help you analyze your needs, resources, timelines, stakeholders and endpoints in order to select the most effective stakeholder involvement or alternative dispute resolution process.
3. Referral if necessary to an Agency, Federal government or other expert for design assistance.

Our **Implementation Assistance** includes:

1. Access to expert outside facilitators and mediators through the Agency-wide Consensus and Dispute Resolution Services Contract vehicle to assist you in final design and implementation of your most effective process.
2. Access to a National Roster of Environmental Consensus Building and Dispute Resolution Professionals, coaching in how to identify and select the appropriate

person and coaching in how to complete a small purchase for these services. This roster is most appropriately used where the Agency needs a facilitator in a very local area or very specific type of dispute, when the Agency-wide contract is not appropriate and/or where we can place a small purchase order for services.

3. Access to an EPA Employee Internal Facilitators Roster in cases where an internal EPA person is appropriate with regard to conflicts of interest and time that can be devoted to your project.
4. In cases where a contract facilitator is being utilized from the Agency-wide contract, assistance in preparing the analyses and paperwork for chartering an advisory committee under the Federal Advisory Committee Act, assistance in serving as Designated Federal Official, and assistance in locating and administering invitational travel money.
5. Facilitation of internal EPA team meetings during a stakeholder involvement, policy dialogue, negotiated rulemaking or alternative dispute resolution process.
6. Coaching and strategic planning assistance to EPA teams engaged in intensive stakeholder involvement, policy dialogue, negotiated rulemaking or alternative dispute resolution processes.
7. Assistance in evaluating stakeholder involvement, policy dialogue, negotiated rulemaking or ADR processes while they are ongoing or after they are completed
8. Assistance in coordinating with OMB OIRA desk officers while involved in a policy dialogue or negotiated rulemaking process.
9. Assistance in coordinating with the SBREFA outreach and panel processes with other stakeholder involvement processes.
10. Assistance in coordinating stakeholder involvement processes with other programs or offices such as environmental justice office, tribal office, peer review processes.

Our **Training Assistance** includes:

1. Conducting management and staff briefings, brown-bag discussions, short courses in stakeholder involvement planning and implementation.
2. Coordination with the ADR Specialist in conducting training courses in Alternative Dispute Resolution.
3. Assistance in identification and contracting for outside training courses in stakeholder involvement, consensus building and ADR for EPA staff and participants in EPA stakeholder involvement activities.

4. Sponsoring a Distinguished Speakers Series in Stakeholder Involvement and Dispute Resolution topics for EPA HQ.

III. Why Are Stakeholder Involvement and ADR Processes Advantageous?

IV. What are EPA's Commitments to Stakeholder Involvement and Alternative Dispute Resolution?

EPA leads the Federal government in the use of stakeholder involvement processes and the use of alternative dispute resolution processes to resolve disputes with outside parties. EPA conducted the earliest negotiated rulemakings in the Federal government and was a key player in the decision of Congress to pass the Negotiated Rulemaking Act. EPA has also been an early leader in the use of mediation and minitrials to resolve enforcement disputes and again was a key player in Congress' decision to pass the Administration Resolution Act. The current Administrator is an enthusiastic supporter of both meaningful stakeholder involvement and alternative dispute resolution. [we could use a quote here]

IV. Contact Points

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V. Definitions

Stakeholder Involvement

short definition:.....

Stakeholder involvement can be divided into four subcategories of processes based upon the endpoints of each process: *Outreach*, *Consultation*, *Recommendations*, *Agreements*.

Outreach:

Consultation:

Recommendations:

Agreements:

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) includes all forms of dispute resolution other than court adjudication. There are numerous models of ADR techniques, but the most common are *Facilitation*, *Mediation*, *Arbitration* and *Minitrials*.

Facilitation is a process in which a “third party” who is not one of the parties to the dispute or negotiation or problem resolution assists the parties in articulating their needs and objectives, setting a schedule for completion of talks and assisting the parties in identifying and overcoming obstacles to moving forward.

Mediation is a process in which parties to a dispute or negotiation or problem use a third party neutral to assist them in reaching an agreement. The third party neutral, mediator, does not impose a settlement or resolution on the parties, but does assist the parties in articulating their needs, possible options, potential consequences. A mediator may be more active than a facilitator in identifying barriers to resolution or settlement and in overcoming impasses by taking a more active part in structuring the process or searching for solutions. A mediator may also conduct “shuttle diplomacy” between parties or between meetings and may be entrusted by the parties with drafting a settlement document, negotiated agreement or consensus recommendations as directed by the parties.

Arbitration is a more adversarial proceeding in which disputing parties present their cases to a third party decision maker or panel of decision makers. These arbitrators may be selected more for their substantive knowledge of the technical issues rather than legal issues involved in the dispute than the typical judge or administrative law judge. Arbitration may result in a non-binding decision which the parties may decide to implement or not; or it may result in a binding decision that the parties must implement.

Minitrial is a process that combines some of the features of mediation and arbitration. In

a minitrial, the disputants will present their case in an abbreviated fashion to a panel composed usually of top managers of the disputing parties' organizations and a neutral third party. After hearing the case, the panel will meet and negotiate a recommended settlement of the issues to the parties.

FACT SHEET

What are the Statutory and Executive Order Mandates for Stakeholder Involvement and Dispute Resolution?

1. Negotiated Rulemaking Act (1990, 1996)

- o Provides official statutory authorization for conducting multistakeholder negotiations on Agency rules.
- o Provides a suggested structure and procedures to follow.

2. Administrative Dispute Resolution Act (1990, 1996)

- o Provides official statutory authorization and encouragement for the use of mediation and arbitration and other forms of Alternative Dispute Resolution (ADR) in resolving government disputes, both internal to the government and between the government and external parties.
- o Provides some structure for use of ADR, particularly for use of arbitration
- o Directs each agency to appoint an ADR Specialist
- o Directs each agency to promulgate an ADR policy and implement it.
- o Directs each agency to train agency staff to implement the Act.
- o Provides authorization for other than full and open competition in procuring neutrals to facilitate reg negs.

3. Executive Order 12866 (date)

- o Section 6 directs agencies to use negotiated rulemaking or other consensus building processes where appropriate in the development of rules.

4. Executive Order on Civil Justice Reform (date)

- o Directs agencies to use ADR whenever appropriate to resolve disputes between the government and outside parties.

5. Executive Order on Consultation with Tribal Governments (date)

- o Directs agencies to use negotiated rulemaking or consensus building processes to develop rules when tribes will be substantially affected by rulemaking.